

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAHUL CHAUDHARY, JM**

ITA No.6924/Mum/2018
(Assessment Year: 2013-14)

Tex-Kare Cleaners Pvt. Ltd.
99/103, Kazi Sayeed Street,
Masjid Bunder,
Mumbai-400 003

(Appellant)

PAN No. AADCT1696D

ITO 8(3)(1)
Aaykar Bhavan, M.K. Road,
Mumbai-400 020

Vs.

(Respondent)

Assessee by : Adv. Ritika Agarwal &
Adv. Sandesh Salunkhe, ARs
Revenue by : Shri P.D. Chougule, DR

Date of hearing: 26.02.2024

Date of pronouncement : 03.04.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. This is an appeal filed by assessee recalled by an order of MA No.118/Mum/2022, dated 11th January, 2024, filed against the appellate order passed by Commissioner of Income-tax (Appeals)-14, Mumbai [the learned CIT (A)], for A.Y. 2013-14 on 20th July, 2018, dismissing the appeal of the assessee against the assessment order passed under Section 143(3) of the Income-tax Act, 1961 (the

Act) by the Income Tax Officer, Ward 8(3)(1), Mumbai, dated 28th March, 2016, was dismissed.

02. The assessee has raised following grounds of appeal:-

“Being aggrieved by the order of the Assessing Officer 8 (3)-1, Mumbai, this appeal petition is filed on the following amongst other grounds of appeal, which it is prayed may be considered without prejudice to one another.

1. On the facts, and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) erred in upholding action of the Assessing Officer in adding share premium of RS 11,340,000 being RS. 900 per share for 12,600 equity shares in aggregate without appreciating that the method of valuation adopted by the Assessee fetched the same result as prescribed in Rule 11UA of the Income-tax Rules 1962, and even otherwise, valuation as submitted to the Assessing Officer under discounted cash flow method recognized under Rule 11UA fetched the same result as worked out in earlier method.

2. On the facts, and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) erred in arriving value per share at RS. 27.90 which was below the face value per share disregarding the legal position that a company is prohibited from issuing shares at discount in terms of section 53 of the Companies Act 2013.



3. *On the facts, and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) erred in appreciating that Rule 11UA of Income Tax Rules, 1962, which determines the valuation of unquoted shares and being a provision which purports to determine the income which is chargeable to tax was introduced by Income Tax (Fifteenth Amendment) Rules, 2012, came into effect on November 29, 2012, and so the said valuation rules cannot be applied.*

4. *On the facts, and in circumstances of the case, and in law, without prejudice to grounds of appeal considered elsewhere, addition u/s 56 of the Income Tax Act, 1961, ought to be restricted to the amount received by the appellant on or after November 29, 2012, and not for amounts received in earlier years and also for amounts received prior to November 29, 2012, during the previous year 2012-13.*

5. *Your Appellant craves leave to add to, amend, alter, modify, and / or delete any of the above grounds of appeal at or before final disposal of appeal.”*

03. The brief fact of the case shows that assessee is a company engaged in the business of laundry service, filed its return of income on 18th September 2013, at ₹ nil. The return was selected for scrutiny by issuing notice under Section 143(2) of the Act on 4th September 2014.
04. During the year assessee had issued shares of face value of ₹100 at ₹1,000/- per share at a premium of ₹900/-. The shares of the assessee



company were valued on the Net Value Asset method. The learned Assessing Officer noted that assessee has shown the net asset value of ₹1,26,00,000/- and number of shares issued are 12,600, therefore, value per share was determined at ₹1,000/-. The learned Assessing Officer questioned the same according to him the book value of the shares as on 31st March 2012, was negative, as the valuation by the assessee didnot consider share application money as liability. Therefore, one more opportunity was provided to the assessee to explain the valuation of shares. Assessee was also required to prove the creditworthiness of the subscribers. The assessee furnished the front page of the return of income but did not explain the source of the creditworthiness of the subscriber and therefore, show cause notice was issued on 30th November 2015.

05. The assessee explains that the assessee is incorporated on 1st January 2008, for carrying on business of providing services in relation to dry-cleaners and dry launderers but could not commence the business. The assessee has made an investment in shares of another company, namely Spotless Laundry Services Private Limited. This company was in the process of setting laundry and other business at Lavasa, a tourist destination. The investment by the assessee is on the expectation and projection that investment in the above company at a premium would result in business and increased profitability. However, as there are no business related assets and liabilities in the assessee company till issue of above shares, valuation of shares was made on future net asset value based on allotment of shares. The additional shares that were allotted are only to existing shareholders, directors, and their family members. The net worth certificates, and book value of the shares were also submitted. Thus, the claim of the

assessee is that valuation of shares of Assessee Company is on net asset value method, which is one of the prescribed methods for valuation of shares. It is also claimed that shares are not issued at a high premium than the book value and therefore, provision of Section 56 does not arise.

06. The learned Assessing Officer examined the claim of the assessee and considering the provisions of Section 56(2) (viib) of the Act, held that assessee has failed to bring on record any evidence that would satisfactorily explain the basis for the share premium and the valuation of the share. He further held that as on 31st march, 2012, the shares of the company had negative value and funding of shares at a substantial premium, as the underlying asset of the startup did not support higher fair market value. He further held that assessee has also failed to prove the source through which the subscriber had paid the shares at a premium. Accordingly, he held that the premium of ₹900 is not justified on the basis of valuation of the shares as well as the creditworthiness of the subscribers. Accordingly, the share premium of ₹900 for 12600 shares amounting to ₹1,13,40,000/- was added back to the total income of the assessee under Section 56(2)(viib) of the Act by passing an order under Section 143(3) of the Income-tax Act, 1961 (the Act) dated 28th March 2016.
07. Assessee aggrieved with the assessment order preferred the appeal before the learned Commissioner of Income tax (Appeals). Before the learned CIT (A), the assessee contested that as per the net asset value method, the valuation of the shares of the assessee is ₹1,004.44 per share and therefore, the addition is wrongly made. With respect to the creditworthiness of the investor's assessee, submitted the copy of the income tax return, computation of total

income and balance sheet of the persons to whom the shares were allotted to show their creditworthiness. The claim of the assessee is that the valuation of the shares of the company is determined by the investment in a subsidiary company, namely Spotless Laundry Private Limited. The assessee also submitted another valuation working, wherein it was shown that the value per share is ₹6321/- and assessee has issued these shares at ₹1000/- and therefore, the addition is wrongly made.

08. The learned CIT (A) rejected the contention of the assessee submitting that the valuation of the assessee before the learned Assessing Officer was valuation post issue of shares at a premium, which is not relevant. The assessee should have carried out the valuation before the issue of those shares to derive whether the shares are issued at fair market value or not. According to him, the total assets of the company is ₹1.26 crores and total liability of the company is ₹1.25 crores and therefore, the net asset of the assessee company is merely ₹2 lacs and face value of shares is ₹100 and according to him, the fair market value of shares is only ₹27.9, therefore, according to him, the assessee was not in a position to command any premium. Accordingly, he confirmed the addition under Section 56(2)(viib) of the Act and directed the learned Assessing Officer to recalculate the addition. Thus, the action of the learned Assessing Officer was confirmed by appellate order dated 20th July 2018. Assessee claims that it has enhanced addition.
09. By order dated 25th March 2022, in ITA No. 6924/Mum/2018, the co-ordinate Bench disposed of the appeal by dismissing it. However, vide MA No.118/Mum/2022, dated 8th January 2024, the appellate order of the co-ordinate bench was recalled. The co-ordinate bench,

in paragraph no.3 of the MA order noted that the assessee was asked to furnish four different details within six weeks' time. The assessee submitted that these are old details of ten years old and further, on 9thMarch 2022, asked for further time. On 29thMarch 2022, these additional details containing 41 pages submitted in time, but appellate order was already passed on 25thMarch 2022, by ITAT. Thus, the original order passed was recalled and this appeal is reinstated.

010. The learned Authorized Representative referred to 2 paper books filed before us of 65 pages and 53 pages respectively and also detailed submission of additional information as required by the coordinate bench as per letter dated 21stMarch 2022. Her claim was that Assessee Company is a private limited company, which is owned by shareholders belonging to two different families. The assessee issued 12600 shares at a premium of ₹900 per share. The assessee company is primarily an investment company by making an investment of ₹1.25 crores in equity shares of Spotless Laundry Services Private Limited, which is an operating company formed with another entity Lavasa Corporation Limited. Therefore, the value derived by the shareholders of Assessee Company is linked to the valuation of operating company. It was further stated that Spotless Laundry Services Private limited is a subsidiary of Lavasa Corporation Limited where the assessee is a minority shareholder. She referred to the submission made dated 21stMarch 2022, at the request of the Bench. She submitted that in Spotless Laundry Services Private Limited 76% is held by Lavasa Corporation Limited and 23.98 % is held by the assessee. she submitted that the total assets base of Spotless Laundry Services Private Limited as on 31st

March 2012, is ₹21.13 crores and on 31st March 2013, of ₹21.95 crores. The reserve and surplus as on 31st March 2012, is ₹501 lacs and as on 31st March 2013, at 620 lacs. She also referred to a shareholders' agreement dated 12th February 2009, between Lavasa Corporation and Akash Cleaners Limited along with Spotless Laundry Services Private Limited. She submits that now against Akash Cleaners Private Limited on its exit the assessee is the partner shareholder. It was further submitted that shares of Spotless Laundry Services Private Limited itself has been issued to the assessee at a premium of ₹990 per share. The assessee does not have any other asset and therefore, the value of the shares of the assessee is derived from the investment of the assessee in Spotless Laundry Services Private Limited. It was stated that the assessee's investment in Spotless Laundry Services Private Limited at that premium has been accepted by the Revenue. Therefore, she submitted that though the assessee has valued the shares issued under net asset value but now on subsequent information sought by the Tribunal it is submitted that the shares of the assessee company should be valued based on the valuation of operating company which is also at the same premium and therefore, no addition can be made.

011. The learned Departmental Representative vehemently supported the order of the lower authorities. He submitted that the assessee has failed to show what is the correct valuation i.e., fair market value of the shares issued. Assessee has not followed any of the methods for valuation of shares. Assessee also failed to substantiate the valuation based on its asset. Assessee has also wrongly calculated the net asset value of the shares issued by not considering share application money as current liability, even if the valuation of the shares post

issue is to be considered. He submits that the valuation adopted by the assessee is diametrically opposite and incorrect as provided by the law. Therefore, the orders of the lower authorities need to be sustained.

012. The learned authorized representative submitted that assessee is an investment company, which has made investment in a spotless laundry private limited, which is an operating company; therefore, the value of the shares of this company derives valuation of shares of operating company. She submitted that though the assessee has stated that the net asset value is the method adopted for issue of shares, in fact in an investment company, the shares should be valued based on underlying investment.
013. We have carefully considered the rival contentions and perused the orders of the lower authorities. We find that during the year assessee has issued 12600 shares to the existing shareholders of the assessee company on 5th February, 2013 of the face value of ₹100 at a premium of ₹900 per share. The assessee has derived the valuation of shares by computing the net asset at ₹1.26 crores wherein the major asset is investment in shares of another company namely Spotless Laundry Services Private Limited. Undoubtedly the working provided by the assessee for the purpose of valuation of its shares was considered after receipt of the share application money and did not consider the said application money as a current liability. Therefore, naturally the amount of share application money stands invested in the balance sheet of the company, the net asset of the assessee company will go up but if, said application money is not considered by the assessee as current liability, the amount deployed is considered an asset but the source of such amount is not



considered as a liability and therefore there is a fallacy. Thus, the submission of the assessee that as it has issued 12600 shares, the net asset value of ₹1000/- per share is fair market value is not acceptable. The learned Assessing Officer has correctly disregarded this fact stating that assessee has considered only the provision of expenses while computing the net asset but has failed to consider the current liability of share application money. According to him, in the net liabilities share application money should have been considered as liability. If the same is considered, the net asset value is zero. Therefore, the addition of the premium was made under Section 56(2)(viib) of the Act. When the matter reached before the first appellate authority, the learned CIT (A) found that fair market value is only ₹27.92 per share and therefore, the learned Assessing Officer was directed to make the higher addition. Thus, there was an enhancement of the addition. In fact, the learned CIT – A is upheld the addition but has enhanced the addition. This too without issue of notice under section 251 of the act. Before us, the assessee submits that according to its valuation, the fair market value of the share is ₹5,575/- and it is inconformity with AS-27. We find that at various stages of the proceedings, the assessee has consistently changed its stand of the valuation. Now assessee before us submitted that that assessee is an investment company, which has made investment in spotless laundry services private limited as a minority shareholder along with Lavasa properties private limited, where the shares have been also issued at the rate of ₹ 1000 per share. Assessee is also showing us the balance sheet of spotless laundry services private limited where the assets are in the range of ₹ 21 crores. No doubt in the case of an investment company the valuation of the shares of the investment company depends on the underlying assets by that



company in other companies i.e. operating companies. However, it is for the assessee to substantiate it. Before us, the assessee has neither placed the annual accounts of spotless laundry services private limited nor produced any valuation report of the valuation of shares of spotless laundry services private limited. If that is available then, on the basis of such a valuation, the value of the shares of the assessee i.e., investment company can be derived at. We do not agree with the valuation made by the assessee. According to the provision of Section 56(2) (viib) of the Act, when the consideration for issue of shares exceeds the face value of such shares, the aggregate consideration received exceeding the fair market value of the shares shall be income of the company. The fair market value of the share may be higher of (i) the valuation derived in accordance with the prescribed method [Rule 11U and 11 UA of The Income tax Rules] or (2) as may be substantiated by the assessee to the satisfaction of the learned Assessing Officer based on the valuation of the date of issue of shares of his assets. Thus, the only option is that assessee has to derive the valuation as per Rule 11UA or it has to be substantiated based on the value of its assets, whichever value of the above two is higher shall be considered as fair market value. In the present case, it is claim of the assessee by submitting additional information as called by the co-ordinate Bench that the value of the shares of the company are derived by its investment in an operating company i.e., Spotless Laundry Services Private Limited. However, these facts are available, but this has not been the claim of the assessee before the lower authorities. Before us, also the assessee has not furnished the valuation of the shares of Spotless Laundry Services Private Limited. However, it is the claim that the shares of Spotless Laundry Services Private Limited are also issued



on similar premium, which is accepted by the Revenue. Further, even the net asset value derived by the assessee is not correct, as share application money has not been considered as liability. Further, based on the order giving effect to the order of the first appellate authority it is apparent that there is an enhancement of ₹ 908460/- to the total income of the assessee. Such order has been placed before us dated 15/1/2021. The enhancement of income if to be made by the learned first appellate authority should have been in accordance with the provisions of section 251 of the income tax act. We do not find any such notice given to the assessee of enhancement. Therefore, also the order of the learned CIT – A is not sustainable. Further the learned CIT – A value of the shares of the assessee company adopting net asset method on his own. Admittedly, net asset value method is one of the methods, but whether it is an appropriate method in the facts and circumstances of the case has not at all been discussed by the lower authorities. This is also relevant in view of the fact that the assessee is merely an investment company now. Therefore, in view of the (i) additional information called by the coordinate bench earlier, which were not available before the learned AO earlier, (ii) claim of the assessee that the assessee is merely an investment company which has invested in an operating company, value of the shares of the assessee company is derived by the value of the shares of operating company and proportionate holding of the assessee company, (iii) non-submission of the valuation of the shares of spotless laundry services as well as its annual accounts, (iv) consistently changing stand of the assessee with respect to the valuation methodology and the amount of the valuation, we restore the whole issue back to the file of the learned assessing officer with a direction to the assessee to



substantiate the fair value of shares issued in accordance with the provisions of section 56 (2) (viib) of the act. The learned assessing officer may examine the same and after giving an opportunity of hearing to the assessee, decide it afresh. Accordingly, ground numbers 4 – 23 of the appeal of the assessee are restored back to the file of the AO.

014. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 03.04.2024.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: .2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai